

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN HENRY,

Plaintiff,

v.

SAN FRANCISCO POLICE DEPT.,
et al.,

Defendants.

No. C 07-06260 CW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Plaintiff requests the appointment of counsel to represent him in this action.

There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light

1 of the complexity of the legal issues involved. See id. at 1525;
2 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v.
3 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these
4 factors must be viewed together before reaching a decision on a
5 request for counsel under § 1915. See id. The Court finds that
6 exceptional circumstances entitling Plaintiff to court appointed
7 counsel do not exist. The likelihood of Plaintiff's success on the
8 merits cannot be ascertained at this point in the proceedings, and
9 the legal issues are not complex. Accordingly, Plaintiff's request
10 is DENIED.

11 This Order terminates Docket no. 3.

12 IT IS SO ORDERED.

13 Dated: 2/13/08

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15 CLAUDIA WILKEN
16 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KEVIN HENRY,

Plaintiff,

v.

SF POLICE DEPT. et al,

Defendant.

Case Number: CV07-06260 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 13, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin Henry
P.O. Box 67
San Bruno, CA 94066

Dated: February 13, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California